

REMARKS/ARGUMENTS

With entry of this amendment, claims 1-8, 10-18, 29, 30, 34, and 50 are currently pending in the above-identified application. The specification is amended to include the filing dates and serial numbers (and issued U.S. Patent number, where pertinent) corresponding to the commonly U.S. Patent Applications filed on even date with the instant application and which were also previously identified by inventor and title in the specification as filed. Claims 1, 3, 10, and 18 are amended and claim 50 is added as set forth in detail below. No new matter has been added by these amendments. Applicants expressly reserve the right to pursue claims of original scope in a related, co-pending application. Examination and reconsideration of all pending claims are respectfully requested.

Rejections under 35 U.S.C. § 112, second paragraph

Claim 3 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. The Examiner states that "it is unclear exactly what the first compound is since the claim can be read as either requiring perfluoroalkoxy or requiring perfluoroalkoxy ethylene propylene."

Applicants respectfully disagree with the Examiner's position that claim 3 is indefinite. A claim is definite where one of skill in the art would understand the scope of the claim when read in light of the specification.¹ Here, the specification refers to "PFA" (also known in the art as perfluoroalkoxy) and "FEP" (also known in the art as fluorinated ethylene propylene) as optional adhesive or melt-processible materials that may be used in accordance with the claimed method.² In view of this disclosure, the skilled artisan would understand the first compound in claim 3 as requiring "perfluoroalkoxy" and not "perfluoroalkoxy ethylene propylene."

Although Applicants believe claim 3 to be definite, but in order to expedite prosecution of the instant application, Applicants have amended claim 3 to recite

¹ See MPEP § 2173.02.

"perfluoroalkoxy (PFA) and fluorinated ethylene propylene (FEP)." Applicants believe that this amendment further clarifies that "perfluoroalkoxy" defines the first compound of the recited Markush group.

In view of the remarks and amendments set forth above, withdrawal of the rejection of claim 3 as allegedly indefinite is respectfully requested.

Rejections under 35 U.S.C. § 102

Van Schaftingen *et al.* and Kruck *et al.*

Claim 1 stands rejected under 35 U.S.C. § 102(e) as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over, Van Schaftingen *et al.* (U.S. Patent No. 6,866,812). Claims 1, 10, 15, 16, and 18 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over, Kruck *et al.* (U.S. Patent 5,168,624).

While not agreeing with nor acquiescing to the instant rejections nor reasons for rejection, but in order to expedite prosecution of the instant application, Applicants have amended independent claims 1, 10, and 18 to recite that after fixing of the material that forms the inflatable channel, the inflatable channel "is collapsible." Support of this amendment is found in the application as filed at, for example, page 28, lines 2-9 (stating that an inflatable channel may be "collapsible during compression or compacting of the graft body section").

Neither Van Schaftingen *et al.* nor Kruck *et al.* teach or suggest fixing material that forms an inflatable channel when the channel is in an expanded state, "wherein after said fixing, the inflatable channel is collapsible," as recited in the amended claims. Accordingly, Van Schaftingen *et al.* does not anticipate or render obvious claim 1; and Kruck *et al.* does not anticipate or render obvious any of claims 1, 10, 15, 16, and 18. In view of the above, withdrawal of the instant rejections is respectfully requested.

² See, e.g., specification at p. 18, l. 10 to p. 19, l. 2.

McDermott *et al.*

Claims 1, 7, 8, and 29 stand rejected under 35 U.S.C. § 102(a) and (e)) as allegedly anticipated by McDermott *et al.* (U.S. Patent 6,312,462).

With respect to claims 1, 7, and 8, while Applicants do not agree with the rejection nor reasons for rejection, Applicants believe the present rejection to be obviated in view of the present amendments to claim 1 (as set forth above). In particular, it appears to be the Examiner position that "polymerization of [an] expansion fluid" in McDermott meets the claim limitation, "fixing the fusible material that forms the channel while the channel is in an expanded state." Claim 1 as amended, however, recites "wherein after said fixing, the inflatable channel is collapsible." Applicants note that, once a fluid is introduced into an inflatable channel and polymerized during deployment of the graft within a vessel, the inflatable channel is no longer collapsible. Accordingly, McDermott does not anticipate the instant claims 1, 7, and 8.

With respect to claim 29, Applicants traverse the instant rejection. Claim 29 recites "wherein the first layer and the at least one additional layer of fusible material are disposed onto the mandrel by wrapping the layers thereabouts." McDermott, which describes a device formed from ePTFE, does not disclose "wrapping layers" of fusible material about a shape forming member. McDermott describes a device having an "inner wall 34" and an "outer wall 36," each wall having an "annular structure."³ McDermott further describes that walls 34 and 36 are formed by extrusion and expansion of ePTFE.⁴ As of the effective filing date of the instant application, extrusion and expansion of ePTFE directly in the form of a tube was a standard method for forming ePTFE tubing. (*See, e.g.*, U.S. 6,436,135 at col. 8, ll. 24-49, esp. ll. 35-38, referring to the extrusion of PTFE "to form tubing having [a specified diameter]" (emphasis provided)). Per McDermott, it is only after the walls of the device are formed that the outer wall 36 is placed over the inner wall 34:

Each wall 34, 36 of the main body 12 can ... be fabricated by extrusion followed by expansion. The outer wall 36

³ McDermott at, *e.g.*, column 4, lines 11-14

⁴ *Id.* at column 6, lines 61 and 62.

component is then placed over the inner wall 34 component, e.g., on a mandrel.⁵

While a ePTFE tube can be formed by wrapping material about a mandrel, such wrapping stands in stark contrast to the methodology actually described in McDermott, in which the existing tube is simply slipped onto a mandrel. Thus, McDermott does not disclose wrapping of layers of fusible material about a shape forming member, as presently recited in claim 29.

Accordingly, for at least the reasons set forth above, McDermott does not anticipate claim 29. Withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-3, 6, and, 7 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Rogers *et al.* in view of Philips *et al.* (WO 99/37242). The Examiner states that Philips discloses "applying barbs or bristles to the outside of the graft to retain it in place," and further contends that it would be obvious to have barbs on the outside of a fusible material making a graft "since this would prevent movement of the graft within the human body."⁶ The Examiner further contends that this would be "considered a method of fixing the fusible material since it prevents the fusible material from collapsing."⁷

While Applicants do not agree with the rejection nor reasons for rejection, Applicants believe the present rejection to be obviated in view of the present amendments to claim 1. As set forth above, claim 1 now recites "wherein after said fixing, the inflatable channel is collapsible." Assuming, for the sake of argument only, that the skilled artisan would be motivated to combine Rogers and Philips in the manner proposed by the Examiner, such a combination would not lead to a method as presently claimed even under the Examiner's interpretation of these references. As stated by the Examiner, barbs on the outside of a graft "prevents the fusible material from collapsing," which the Examiner also considers to be a

⁵ *Id.* at lines 61-64.

⁶ Office Action dated July 5, 2005, at page 5, item 9.

⁷ *Id.*

fixation of the material. Thus, there would be no collapsible inflatable channel following fixation.

For at least the reasons above, claims 1-3, 6, and 7 are patentable over Rogers in view of Philips. Withdrawal of the rejection is respectfully requested.

Allowable Subject Matter

The Examiner has indicated that claims 30 and 34 are allowed.

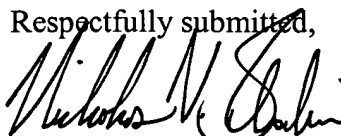
The Examiner has also objected to claims 4, 5, 11-14, and 17 as being dependent upon a rejected base claim, but has indicated that these claims would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claims. In this regard, Applicants note that new claim 50 recites the subject matter of original claim 4 in independent form (*i.e.*, all the limitations of claim 4, including the limitations of original base claim 1). In view, however, of the arguments and amendments set forth above with respect to base claims 1 and 10, Applicants have also maintained claims 4, 5, 11-14, and 17 in dependent form and instead request reconsideration and withdrawal of the objection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,



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